IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7564 OF 2003

Sikandar Alla Baksha Nagarji ..Petitioner.
Vs.
Yeshwant Subrao Bidkar ..Respondent.

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Mr. A.A. Kumbhakoni with Mr. Ashutosh Kulkarni for the Petitioner.
Mr. R.S. Datar for the Respondent.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

6th July, 2006.

ORAL ORDER :

1. The Original Respondent, Yeshwant Subrao Bidkar, who was the owner of premises comprised in CTS 561/2 situated in B Ward at Kolhapur instituted a suit for eviction against the tenant on the ground of default in the payment of rent and on the ground that he required the premises bonafide for his use and occupation. The suit was decreed by the Trial Court on 13th November, 1999 on the ground that the landlord had established that he required the premises reasonably and bonafide for his own use and occupation. In appeal the decree was confirmed by the Additional District Judge. The Writ Petition before this Court under Article 227 of the

Constitution was instituted on 16th October, 2003. The landlord expired on 19th September, 2004 during the pendency of the proceedings before this Court and his heirs have been brought on the record.

2. The First submission that has been urged is that upon the death of the landlord during the pendency of the proceedings, this Court in the exercise of its supervisory jurisdiction under Article 227 must nevertheless take cognizance of this subsequent development. The submission is that in as much as the requirement that was set up in the suit was for the landlord himself, the requirement stands extinguished upon his death and the decree for possession must be set aside.

3. The landlord was on the date of the institution of the proceedings 74 years of age, and he pleaded that he was indisposed. The landlord stated that he was residing at Peth in small residential premises together with his wife, a married son and his family consisting of a daughter-in-law and three grandchildren. The landlord stated that the residential accommodation in which he was residing was inadequate to meet the requirements of his

family. The landlord then pleaded that as a result of the ailments that he was suffering from he was required to visit Kolhapur from time to time for medical treatment. The landlord also carried on business as a potter at Kolhapur for which he was required to visit Kolhapur. According to the landlord it was inconvenient for him due to his physical ailments to commute between Peth and Kolhapur and that save and except for the suit property at Kolhapur he had no other house of his own. In these circumstances, the landlord set up the case that during the rest of his life he desired to settle in Kolhapur where he could also carry on his business as a potter and receive medical treatment.

4. Both the Courts below on a consideration of the evidence on the record have accepted the landlord's case that the premises were reasonably and bonafide required by him. In so far as the issue of comparative hardship is concerned, the landlord produced in the course of the deposition of his witness Exh. 26, which is a city survey extract which showed that the tenant had a property bearing CTS No.862 at Surve Nagar. Though the tenant denied that C.S. 862 was owned by him, it has been stated in the judgment of the Trial Court that photographs of the house and the

name plate on the premises were produced on the record in addition to the property index extract.

5. The first submission that has been urged before the Court now falls for consideration. The law on the subject is not res integra and has been considered in several judgments of the Supreme Court. The first judgment to which it would be necessary to refer is a judgment of two Learned Judges of the Supreme Court in **Phool Rani v. Naubat Rai Ahluwalia**[1]. Phool Rani's case was one in which the landlord had sued for eviction under Section 14(1)(e) of the Delhi Rent Control Act, 1958, on the ground that the premises were required for occupation as a residence for himself and the members of his family. The Additional Rent Controller dismissed the application on the ground that the notices to quit were not valid against which decision an appeal was filed. During the pendency of the appeal the landlord expired and his legal representatives were brought on the cord. The Rent Control Tribunal set aside the decision of the Additional Rent Controller on the preliminary issue and remanded the ejectment application for a decision on merits. An order of eviction was passed against which

1 (1973) 1 SCC 688.

an appeal was dismissed by the Tribunal. In a second appeal the High Court of Delhi took the view that the right to sue did not survive to the heirs of the original plaintiff and on that ground dismissed the ejectment application leaving it open to the heirs to file fresh proceedings founded on their own requirements. The Supreme Court noted that though the landlord had died during the pendency of the appeal, it was as if he died during the pendency of the suit because the suit itself had been dismissed on a preliminary issue concerning the validity of the notices to quit and was remanded in appeal for trial on merits. At this stage, it would be necessary to note that **Phool Rani**'s case dealt with two aspects of the case. In so far as the first aspect is concerned, the Supreme Court held that the requirement which was pleaded in the ejectment application was the personal requirement of the landlord. If the ejectment application were to succeed, the premises in the possession of the tenant may come to be occupied by the landlord and the members of his family. But that did not make the requirement pleaded in the application any the less a personal requirement of the plaintiff. The Supreme Court held that the fact that the members of the landlord's family must reside with him is his requirement and not theirs and that such a personal cause of

action mush perish with the plaintiff. This aspect of the decision in **Phool Rani**'s case was reconsidered by a larger Bench of the Supreme Court in **Shantilal Thakordas v. Chimanlal Maganlal Telwala**[2].

6. **Shantilal**'s case arose under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, in which the necessity that was pleaded by the original plaintiff was that he required the premises for the use of a partnership firm in which he was a partner. The Trial Court decreed the suit and during the pendency of the appeal, the landlord expired. The Bench of three Learned Judges of the Supreme Court noted that in **Phool Rani**'s case the original plaintiff had pleaded that the premises were required by him for occupation as a residence for himself and for the members of his family. In **Shantilal**'s case the Supreme Court therefore held that on the face of the wording of Section 14(1)(e) of the Delhi Rent Control Act the view expressed in **Phool Rani**'s case was not correct. The following observations in **Phool Rani**'s case were overruled :

2 (1976) 4 SCC 417.

> "Thus, the requirement pleaded in the ejectment application and on which the plaintiff has founded his right to relief is his requirement, or to use an expression which will effectively bring out the real point, his personal requirement. If the ejectment application succeeds – we will forget for a moment that the plaintiff is dead – the premises in the possession of the tenant may come to be occupied by the plaintiff and the members of his family but that does not make the requirement pleaded in the application any the less a personal requirement of the plaintiff. That the members of his family must reside with him is his requirement, not theirs. Such a personal cause of action must perish with the plaintiff."

7. The Supreme Court held in **Shantilal**'s case (supra) that the law permitted the eviction of the tenant for the requirement of the landlord for occupation as a residence for himself and the members of his family. On his death the right to sue did survive to the members of the family of the deceased landlord. In the circumstances, a senior member of the family would take the place of the landlord and is well competent to continue the suit for eviction for his occupation and for the occupation of the other members of the family.

8. At this stage, it would be necessary to note that in the judgment in **Phool Rani**'s case the Supreme Court adverted to several other decisions which were cited before the Court but those

decisions which were stated to fall in three different categories were distinguished. The first category was of cases in which the death of the plaintiff occurred after a decree for possession was passed in his favour, for instance, during the pendency of the appeal by the unsuccessful tenant. In **Phool Rani**'s case the Supreme Court distinguished this first category holding that those decisions are explicable on the basis that the estate is entitled to the benefit which under a decree has accrued in favour of the plaintiff and therefore the legal representatives are entitled to defend further proceedings, like an appeal which constitute a challenge to that benefit. The Supreme Court, therefore held that "**the decree for possession passed in favour of the landlord could be defended by his legal representatives for the benefit of his estate**." (paragraph 15 page 694).

9. Now subsequent judgments of the Supreme Court clearly demonstrate that where the landlord has expired during the pendency of proceedings in appeal, the right to sue would not stand extinguished and the benefit of the decree would enure for the estate of the landlord. In so far as this aspect is concerned, it would be necessary to refer to a judgment of the Supreme Court in

Kamleshwar Prasad v/ Pradumanju Agarwal[3]. In that case, the landlord's application for eviction which was under the U.P. Rent Act of 1972 was dismissed. The appellate authority, however, reversed the conclusion of the prescribed authority and arrived at a finding that the requirement of the landlord to start a cloth business was bonafide entitling him to a decree for eviction under Section 21(1)(a) of the Act. The tenant carried the matter before the High Court in a writ petition. During the pendency of the writ proceedings, the landlord expired and it was urged on behalf of the tenant that upon the death of the landlord the ground for eviction which was found to be established by the appellate authority no longer survived. The High Court rejected that contention. In appeal before the Supreme Court it was urged that though a proceeding under Article 226 was not strictly speaking a continuation of a suit, it was nonetheless necessary for the High Court to have taken cognizance of the subsequent event viz. the death of the landlord. The Supreme Court rejected the submission and held thus :

> "Under the Act the order of the appellate authority is final and the said order is a decree of the civil court and a

3 (1997) 4 SCC 413.

> decree of a competent court having become final cannot be interfered with by the High Court in exercise of its power of superintendence under Articles 226 and 227 of the Constitution by taking into account any subsequent event which might have happened. That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder (sic other) son."

10. The judgment in **Phool Rani**'s case was revisited by the Supreme Court in **Shakuntalabai v. Narayan Das**[4]. The Supreme Court held that the decision of the larger Bench in **Shantilal**'s case by which a part of the reasoning in **Phool Rani**'s case was overruled did not in any manner affect the view expressed in **Phool Rani**'s case that where the death of the landlord occurs after a decree for possession has been passed in his favour, his legal representatives are entitled to defend further proceedings in appeal and the benefit accrue to them under the decree. In fact, the Supreme Court ruled that the ratio in **Shantilal**'s case would re-enforce the aforesaid view. The Supreme Court held that the

4 (2004) 5 SCC 772.

subsequent judgments of the Court including the judgment in **Kamleshwar Prasad** (supra) would demonstrate that the bonafide need of the landlord has to be examined as on the date of the institution of the proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as the heirs are fully entitled to defend his case (para 11 at page 780). The Supreme Court also observed thus :

> In normal circumstances after passing of the decree by the trial court, the original landlord would have got possession of the premises. But if he does not and the tenant continues to remain in occupation of the premises it can only be on account of the stay order passed by the appellate court. In such a situation, the well-known maxim "*actus curiae neminem gravabit*" that "an act of the court shall prejudice no man" shall come into operation. Therefore, the heirs of the landlord will be fully entitled to defend the appeal preferred by the tenant and claim possession of the premises on the cause of action which had been originally pleaded and on the basis whereof the lower court had decided the matter and had passed the decree for eviction."

11. Before concluding the discussion on this aspect of the matter, it will be necessary to advert to the decision of the Supreme Court in **P.V. Papanna v. K. Padmanabhaiah**[5]. That was a case in which the suit for eviction was decreed by the Trial Court against

5 AIR 1994 SC 1577.

which both the appeal and a writ Petition filed by the landlord came to be dismissed. The Special Leave Petition filed by the tenant was dismissed. The High Court had granted four years' time to the tenant to vacate the premises. After the decision in the Special Leave Petition, the landlord expired and the question which was then raised was as to whether the decree had become in-executable as a result thereof. The Supreme Court held that the decree having attained finality the death of the landlord subsequent thereto was not liable to be taken into consideration. In the recent judgment in **Shankutalabai** (supra) some of the observations in **Papanna**'s case were adverted to. The Supreme Court has held that the limited question for consideration in that case was whether a decree which had attained finality would become in-executable on account of the death of the landlord. This was answered in favour of the landlord principally on the basis that the executing Court cannot go behind the decree. The Supreme Court held that for the decision of the appeal in that case, it was unnecessary to examine the question as to the death of the landlord during the pendency of the appeal preferred by the tenant after a decree for eviction has been passed.

12. In the present case, the decree for eviction was confirmed in appeal by the Appellate Court. The Courts designated under Section 28 of the Rent Act have exclusive jurisdiction to entertain and try suits between a landlord and tenant relating to the recovery of rent or possession of premises to the exclusion of the jurisdiction of all other Courts. The benefit of that decree will enure to the legal representatives of the landlord who would be entitled to defend these proceedings under Article 227 and to claim the benefit of the decree for eviction against the tenant. However, it was urged that in the present case, the requirement which was urged was personal to the landlord and not for the members of his family. Hence, it was submitted that the landlord's personal requirement must stand extinguished upon his death. This submission cannot be accepted for more than one reason. Firstly, as the judgment in **Kamleshwar Prasad** and **Shakuntalabai**'s case now hold the requirement of the landlord has to be examined as on the date of the institution of the proceedings. The requirement of the landlord as on the date of the institution of the proceedings has been held to be established both by the Trial Court and in appeal by the Appellate Court. Upon the death of the landlord during the pendency of the writ proceedings under Article

227 the benefit of that decree would enure to his legal representatives and that would not be dependent of the nature of the requirement that was pleaded by the landlord. The provisions of Section 17 mandate the occupation of the premises within a certain period of the date of the recovery of possession and place an embargo on re-letting the premises obtained on a decree under Section 13(1) g for a specified period. Section 17 does not alter the legal position, for the provisions of that Section would bind the heirs who represent the estate of the deceased landlord. Secondly, even a perusal of paragraph 4 of the plaint in which the bonafide requirement has been pleaded would show that it would not be an accurate reading to assert that the requirement which is pleaded was the landlord's personal requirement meaning thereby a requirement in contradistinction with the requirement of his family. Paragraph 4 of the plaint does contain an elaboration of the fact that the landlord himself was aged and that he resided in cramped residential accommodation in the town of Peth together with his wife, son, daughter-in-law and three grandchildren. There is a specific averment that the existing premises, being limited in size, were insufficient to meet the needs of the family of the landlord. The landlord then set up the case that he was required to

go to Kolhapur both for the purposes of his medical treatment and to attend to his business as a potter. It was in the background of these circumstances that the landlord set up a case that it would be more convenient for him to reside in the tenanted premises at Kolhapur. Therefore, strictly speaking a proper reading of paragraph 4 of the Plaint does not indicate that the requirement as set up was individual to him as distinct from the entire family as a whole. But that apart, as a matter of principal, the need of the landlord has to be established on the date of the institution of the proceedings. Once that need is held to be established, the subsequent death of the landlord during the pendency of an appeal or, as in this case, during the pendency of the proceedings under Article 227 does not alter the situation. The decree enures to the benefit of the estate of the landlord. His heirs are entitled to the fruits of the decree. It is unfortunate that the delays of the system make such cases more than an isolated aberration on the canvas. Such cases occur with a disconcerting sense of regularity. To deprive succeeding generations of the benefit of a long, often long drawn, legal battle would result in a miscarriage of justice. Neither law nor equity justify such an outcome.

13. In these circumstances, there is no merit in the first submission which is urged on behalf of the Petitioner that upon the death of the landlord during the pendency of these proceedings, the decree for eviction will have to be reversed. In so far as the merits of the case are concerned, the landlord and his daughter had stepped into the witness box. The landlord initially stated that one room in the suit premises was in his possession. It appears that the landlord was confronted with the assessment extract which showed that two rooms in the suit property were in his possession. The landlord deposed that one room had been in the occupation of his married daughter. It is true that in the course of her evidence she has stated that she was in possession of all the three rooms. However, even if that case is not accepted, in view of the well settled position in law, it would not be open to the tenant to dictate to the landlord that he should either meet his need for accommodation by requiring his married daughter and son- in -law who are in occupation of a portion of the premises to vacate or that he should meet his entire need which has been held otherwise to be bonafide and reasonable by accommodating himself only in one or two rooms. In these circumstances, when there are concurrent findings of both the Courts below, the interference of this Court

under Article 227 is not warranted. A reappreciation of the evidence would not be permissible nor for that matter should this Court substitute the view of both the Courts for some other view.

14. The Petition is dismissed. In order to enable the tenant to take recourse to his remedies against this judgment and order, there shall on the oral request made by counsel for the tenant before the Court, be an order that the decree for possession shall not be enforced for a period of eight weeks from today.